IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1361 of 2006
Date of decision : 30.11.2006.

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Parties Name

Ajay Mahajan and others

..... appellants

vs.

Smt. Romesh Rani and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Sudeep Mahajan, Advocate
for the appellants.

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S.N. Aggarwal, J. (Oral)

The appellant had filed an appeal against the judgment and decree dated 2.4.1992 passed by the Court of Sub Judge Ist Class, Gurdaspur. The said appeal was fixed in the learned Appellate Court for 29.11.1999. On that date, the appellant could not appear in the learned trial Court. As a result, his appeal was dismissed in default by the learned Lower Appellate Court. The appellant filed an application for restoration of the appeal on 18.12.1999. Reply to this application was filed by the respondents. Issues were framed. During the pendency of this application, the appellant died and his legal representative i.e. Ajay Mahajan,

appeared as AW-1. He also examined Dr. Ram Murti Kaushal as AW-2. On the other side, respondent did not lead any evidence. However, the learned Additional District Judge came to the conclusion that the appellant has failed to prove sufficient reasons for his absence on 29.11.1999 and dismissed the application for restoration vide impugned order dated 11.8.2005.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that on 29.11.1999, he was sick and he could not appear in person. He produced his medical certificate in the application for restoration as Exhibit A-1. He had also examined Dr. Ram Murti Kaushal, who was attending on him as AW-2 and the said doctor had also made sworn statement that Sardari Lal (deceased) was suffering from serious ailment.

On the other hand, respondent has not been able to lead any evidence to the contrary. Therefore, the impugned order dated 11.8.2005 is set aside. This petition is accepted. The Appellate Court is directed to restore the appeal at its original number. Since, the appeal has become very old, therefore, the same be decided expeditiously and preferably within a period of four months after the receipt of a copy of this order and after the receipt of the Appellate/trial Court files.

(S.N.Aggarwal)
Judge

30.11.2006.
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